

**THE TENNESSEE REGULATORY AUTHORITY**

**AT NASHVILLE, TENNESSEE**

**IN RE:**

**January 10, 2003**

**CLARK COMMUNICATIONS  
COMPANY, LLC**

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**DOCKET NO. 02-01180**

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**ORDER APPROVING SETTLEMENT AGREEMENT**

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This matter came before the Tennessee Regulatory Authority ("Authority" or "TRA") at a regularly scheduled Authority Conference held on December 16, 2002, for consideration of a proposed Settlement Agreement between the Consumer Services Division of the TRA (the "CSD") and Clark Communications Company, LLC ("CCC" or the "Company") related to alleged violations of the Tennessee Do-Not-Call Telephone Sales Solicitation statutes.<sup>1</sup> The proposed Settlement Agreement is attached hereto as Exhibit A.

Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Regs. 1220-4-11-.07(1) prohibit persons and entities from knowingly making or causing to be made telephone sales solicitation calls to any residential subscribers in this state who have given timely and proper notice to the Authority of their objection to receiving telephone solicitations. Tenn. Code Ann. § 65-4-405(d) requires persons or entities desiring to make telephone

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<sup>1</sup> See Tenn. Code Ann. § 65-4-401 *et seq.*

solicitations to residential subscribers to register in the Do-Not-Call program. Tenn. Code Ann. § 65-4-405(f) authorizes the Authority to initiate proceedings relative to violations of the Do-Not-Call statutes and the TRA rules and regulations promulgated pursuant to the Do-Not-Call statutes.<sup>2</sup> “Such proceedings may include without limitation proceedings to issue a cease and desist order, to issue an order imposing a civil penalty up to a maximum of two thousand dollars (\$2,000) for each knowing violation and to seek additional relief in any court of competent jurisdiction.”<sup>3</sup>

The CSD’s investigation in this docket commenced after it received a complaint on May 20, 2002, alleging that the complainant, a person properly listed on the Do-Not-Call register, received a telephone solicitation from CCC on April 29, 2002. The CSD provided CCC with notice of this complaint on May 21, 2002.

Between June 7, 2002 and August 8, 2002, the CSD received three additional complaints against CCC from persons properly listed on the Do-Not-Call register alleging that they had received telephone solicitations from CCC. The CSD provided CCC with notice of each of the complaints.

The proposed Settlement Agreement was negotiated as a result of the CSD’s investigation into the complaints against CCC. The maximum penalty faced by CCC in this docket is eight thousand dollars (\$8,000) arising from the four (4) complaints.

In negotiating the terms and conditions of this Settlement Agreement, the CSD took into consideration Tenn. Code Ann. § 65-4-116(b), which provides:

In determining the amount of the penalty, the appropriateness of the penalty to the size of the business of the person, firm or corporation charged, the gravity of the violation and the good faith of the person, firm or corporation charged in attempting to achieve compliance, after notification of a violation, shall be considered. The amount of the penalty, when finally

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<sup>2</sup> See Tenn. Comp. R. & Regs. 1220-4-11-.01 *et seq.*

<sup>3</sup> Tenn. Code Ann. § 65-4-405(f).

determined, may be deducted from any sums owing by the state to the person, firm or corporation charged or may be recovered in a civil action in the courts of this state.

CCC is a small company located in Johnson City, Tennessee. CCC registered in the Do-Not-Call Program on December 10, 2001. During the CSD's investigation, CCC commenced its own investigation, did not dispute that the calls were made and expressed an interest in resolving this matter. CCC also agreed to pay to the Authority the amount of four thousand dollars (\$4,000) in settlement of these violations no later than thirty (30) days from the date the Authority approves the Settlement Agreement.<sup>4</sup> In addition, CCC renewed its registration with the TRA as a telephone solicitor on September 25, 2002.

A representative of CCC participated telephonically during the Authority Conference on December 16, 2002. Following a discussion with the parties and a review of the Settlement Agreement, the Directors voted unanimously to accept and approve the Settlement Agreement.

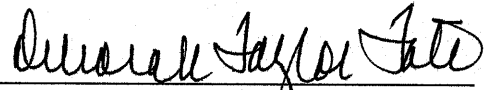
**IT IS THEREFORE ORDERED THAT:**

1. The Settlement Agreement, attached hereto as Exhibit A, is accepted and approved and is incorporated into this Order as if fully rewritten herein.
2. The amount of four thousand dollars (\$4,000) shall be paid by CCC to the TRA no later than thirty (30) days from the date of the Authority's approval of the Settlement Agreement.
3. Upon payment of the amount of four thousand dollars (\$4,000) and compliance with the terms of the Settlement Agreement attached hereto, CCC is excused from further proceedings in this matter, provided that, in the event of any failure on the

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<sup>4</sup> The payment may be made in the form of a check, payable to the Tennessee Regulatory Authority, referencing Docket No. 02-01180.

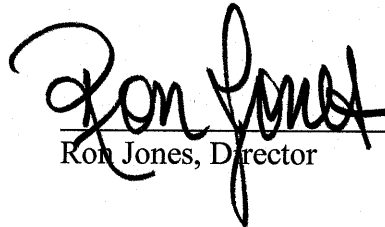
part of CCC to comply with the terms and conditions of the Settlement Agreement, the Authority reserves the right to re-open this docket.



Deborah Taylor Tate, Director



Pat Miller, Director



Ron Jones, Director

# THE TENNESSEE REGULATORY AUTHORITY

AT NASHVILLE, TENNESSEE

IN RE:

ALLEGED VIOLATIONS OF TENN.  
CODE ANN. §65-4-401 *et seq.*, DO-NOT-  
CALL SALES SOLICITATION LAW,  
AND RULES OF TENNESSEE  
REGULATORY AUTHORITY, CHAPTER  
1220-4-11, BY:

CLARK COMMUNICATIONS  
COMPANY, LLC

TRA DOCKET NO. 02-01180  
DO-NOT-CALL PROGRAM T02-00310  
T02-00355  
FILE NUMBERS T02-00413  
T02-00465

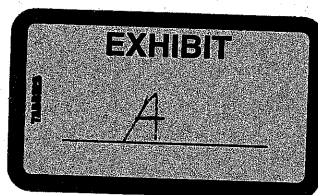
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## SETTLEMENT AGREEMENT

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This Settlement Agreement has been entered into between the Consumer Services Division ("CSD") of the Tennessee Regulatory Authority ("TRA") and Clark Communications Company, LLC ("Clark Communications"). This Settlement Agreement is subject to the approval of the TRA.

This Settlement Agreement pertains to four (4) separate complaints received by the CSD alleging that Clark Communications violated the Tennessee Do-Not-Call Telephone Sales Solicitation law and its concomitant regulations. TENN. CODE ANN. § 65-4-404, and TENN. COMP. R. & REGS. 1220-4-11.07(1) prohibit persons and entities from knowingly making or causing to be made telephone sales solicitation calls to residential subscribers in this state who have given timely and proper notice to the TRA of their objection to



receiving telephone solicitations. TENN. CODE ANN. § 65-4-405(d), requires that persons and entities desiring to make telephone solicitations to residential subscribers pay an annual registration fee and obtain the Do-Not-Call Register prior to conducting such telephone solicitations. Clark Communications has been registered with the Authority as a Solicitor since December 10, 2001.

First Complaint: The CSD's investigation in this docket commenced after it received a complaint (T02-00310) on May 20, 2002, alleging that the complainant, who was a person properly listed on the Do-Not-Call register, received a telephone solicitation from Clark Communications on April 29, 2002. Through its investigation, the CSD learned that Clark Communications was making automated, prerecorded voice solicitation calls. The CSD provided Clark Communications with notice of this complaint on May 21, 2002.

Second Complaint: During its investigation, the CSD received a second complaint (T02-00355) on June 7, 2002, alleging that the complainant, who was a person properly listed on the Do-Not-Call register, received a telephone solicitation from Clark Communications on May 29, 2002. The CSD provided Clark Communication with notice of this complaint on June 10, 2002.

Third Complaint: The CSD received a third complaint (T02-00413) on July 8, 2002, alleging that the complainant, who was a person properly listed on the Do-Not-Call register, received a telephone solicitation from Clark Communications on June 27, 2002. The CSD provided Clark Communications with notice of this complaint on July 15, 2002.

Fourth Complaint: The CSD received its fourth complaint (T02-00465) on August 8, 2002, alleging that the complainant, who was a person properly listed on the Do-Not-Call register, received a telephone solicitation from Clark Communications on June 27, 2002. The CSD provided Clark Communications with notice of this complaint on August 9, 2002.

TENN. CODE ANN. § 65-4-405(f) authorizes the TRA to assess penalties for violations of the Tennessee Do-Not-Call statutes, including the issuance of a cease and desist order and the imposition of a civil penalty of up to a maximum of two thousand dollars (\$2,000) for each knowing violation. The maximum penalty faced by Clark Communications in this proceeding is eight thousand dollars (\$8,000), arising from the four (4) solicitation complaints (\$2,000 each). CSD relied upon the factors stated in TENN. CODE ANN. § 65-4-116(b) during the negotiations which resulted in this agreement, including Clark Communication's size, financial status, good faith and the gravity of the violations.

Clark Communications is a small company that has recently located in Johnson City, Tennessee. During the investigation, Clark Communications did not dispute that the calls were made and expressed an interest in resolving this matter. Further, after receiving notice of the complaints, Clark Communications began its own investigation of the alleged complaints.

In an effort to resolve these four (4) complaints, represented by the file numbers above, CSD and Clark Communications agreed to settle this matter based upon the following acknowledgements and terms, subject to approval by the TRA:

1. Clark Communications does not dispute that the complaints against it are true and valid and that it acted in violation of TENN. CODE ANN. §§65-4-404 and TENN. COMP. R. & REGS. 1220-4-11.07(1).
2. Clark Communications has been registered with the TRA as a telephone solicitor since December 10, 2001, and obtains a monthly copy of the Do-Not-Call register.
3. Since receiving notice of the complaints that are the subject of this Settlement Agreement, Clark Communications has exhibited good faith in its efforts to come into compliance with TENN. CODE ANN. § 65-4-404 and TENN. COMP. R. & REGS. 1220-4-11.07(1) and has acted in a cooperative manner in attempting to resolve this matter.
4. Clark Communications agrees to make a settlement payment of four thousand dollars (\$4,000.00) to the TRA within thirty (30) days of the date the TRA approves this Settlement Agreement.<sup>1</sup> Upon payment of the amount of four thousand dollars (\$4,000.00) in compliance with the terms and conditions of this Settlement Agreement, Clark Communications will be excused from further proceedings in this matter.
5. Clark Communications agrees to comply with all provisions of the Tennessee Do-Not-Call Telephone Sales Solicitation law and regulations. The Company voluntarily

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<sup>1</sup> The payment may be made in the form of a check, payable to the Tennessee Regulatory Authority, sent to 460 James Robertson Parkway, Nashville TN 37243, referencing TRA Docket Number 02-01180.

subscribed to the TRA's Do-Not-Call Register and has taken measures designed to prevent calls to Tennessee residents listed on the Do-Not-Call Register.

6. Clark Communications agrees that a company representative will participate telephonically in the Authority Conference during which the Directors consider this Settlement Agreement.
7. The TRA and Clark Communications agree that the payment of \$4000.00 to the TRA represents the settlement of all claims the TRA could bring against Clark Communications up to and including the date of this Settlement Agreement.
8. If any clause, provision or section of this Settlement Agreement is for any reason held to be illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause, provision or section of this Settlement Agreement and this Settlement Agreement shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not been contained herein.
9. This Settlement Agreement represents the entire agreement between the parties, and there are no representations, agreements, arrangements or understandings, oral or written, between the parties relating to the subject matter of this Settlement Agreement which are not fully expressed herein or attached hereto.

10. In the event of any failure on the part of Clark Communications to comply with the terms and conditions of this Settlement Agreement, the Authority reserves the right to re-open this docket for the purpose of securing compliance and enforcing the Settlement Agreement. Any costs incurred in enforcing the Settlement Agreement shall be paid by Clark Communications.

Eddie Roberson  
Eddie Roberson  
Chief, Consumer Services Division  
Tennessee Regulatory Authority  
12-3-02  
Date

Cynthia C Pridgen  
Signature  
Cynthia C Pridgen  
Print Name  
Marketing Director  
Print Title  
Clark Communications Company, LLC  
11/19/02  
Date